

Mr. S.J. Micciche, Associate Editor  
Boston Globe  
Boston, Mass. 02107

3/7/84

Dear Mr. Micciche,

Your excellent January series on the Reagan administration's tightening of public information prompts this letter. And the hope you may be willing to carry this farthur. I believe it is that important and I can help if you do.

There is what appears to be a parallel Reagan administration campaign against lawyers willing to represent those who cannot afford lawyers. My own lawyer is being whipsawed right now and the District of Columbia bar itself was threatened.

In fact, FOIA itself is currently threatened in one of my suits, which is before a judge with a record of rubber-stamping for the FBI/DJ and CIA and, if the FBI/DJ were not affaid of the possible consequences, they'd have charged me with contempt for refusing to comply with (unprecedented) discovery against a requester.

The Act is quite specific in placing the burden of proof on the government. This is only one of the reasons I gave for refusing to comply with the FBI's discovery demands. They ignored all I attested to, making no effort at even pro forma refutation, and the judge ignored all but this one objection. He held no hearing, just ruled for them. When I refused, they were reluctant to either back down or charge me with contempt, although they threatened to file this charge to my lawyer. He told them I awaited it. So they instead sought a judgement for their costs and got that. And I ignored that and appealed. Instead of awaiting decision on the appeal they got the judge to amend his Order to include my lawyer. They gave him five days to send a check before filing the judgement against him in the District of Columbia courts and when he didn't, they've held off and not filed it.

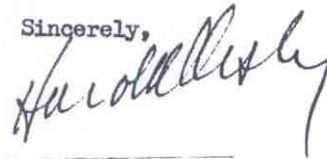
This, of course, is a threat against all lawyers and if upheld, against FOIA. So is discovery, if that is upheld, because the government can make use of FOIA so costly that even wealthy individual and corporate requesters will fear those costs and the inevitable additional delays in obtaining anything.

Under the Rules, in general, whether or not under FOIA, a lawyer can be held responsible for costs if he counsels his client not to comply with a court's Order. In this instance, however, not because he agreed with it - he didn't - my lawyer urged me to comply as the lesser evil. He was apprehensive of the cost of resistance. I, however, refuse to be party to such a precedent. It will negate FOIA.

My other reasons for refusing to provide discovery include advanced age and seriously impaired health, excessive burdensomeness and by a strange twist, the fact that for other reasons I had already provided all such information of which I knew, actually about two file drawers of it! The latter was inadvertently admitted by the DJ lawyer in one of his earlier pleadings. (I had been asked to help the appeals office because of the historical importance of the records sought.)

In all my many FOIA cases the government has lied consistently to stonewall and thus, and in fact by forcing entirely unnecessary litigation, it has fabricated considerable costs. In turn it weeps these created costs on the Congress, seeking amending of the Act. Incidentally, the investigatory files exemption was amended in 1974 over one of my earlier cases and I am loved even less for this.

Sincerely,



Harold Weisberg  
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